the ancillary administrator, are not taxable in the state of the ancillary forum.

(*f.*) Stocks of corporations follow the person of the owner, and are taxed at the place of his residence.

(*g.*) Ships are likewise taxable at the residence of the owner, which is generally that of the home port, or place of registry; although when they are in different states the residence of the owner governs.

(*h.*) The rule as to debts not negotiable being taxed at the residence of the owner is modified, to the extent that where a person residing in one state, has an agent in another, who loans or invests money for him, holds the evidences of debt, and so invests the proceeds of the loans when collected in the same state, it is held then to be taxable at the residence of the agent.

W. H. B.

NORFOLK, Va.

RECENT AMERICAN DECISIONS.

Supreme Court of Errors of Connecticut.

WILLIAM W. WELCH *v.* THE BOSTON AND ALBANY RAILROAD COMPANY.

The defendants, a railroad company, claimed to be exempt from liability for an injury to a horse transported upon their road, by reason of a stipulation in the bill of lading that they were not to be liable for any one of certain specified injuries or causes of injury to any animal thus carried. The court charged the jury that they were still liable for any injury caused by want of ordinary care on their part. *Held*, that the charge was correct.

A stipulation by a bailee for hire for exemption from the consequences of his own negligence, has no validity.

There may, however, be a valid stipulation for a degree of responsibility less than that imposed by law.

Where a stipulation in such a case was open to a question as to whether it intended an exemption from all liability or only a limitation of the common-law liability, and the judge charged the jury that it was void, but that the defendants would be liable only for want of ordinary care, it was held that the defendants were not injured by the charge of the judge that the stipulation was void, even if it were not so, since he held them only to the degree of liability to which they would have been held under any construction of it.

CASE, against the defendants as common carriers, for an injury to a horse carried by them.

On the trial, it was proved that the plaintiff, at Whitesboro', New York, delivered the horse to the New York Central Railroad Com-

pany for transportation, with a card attached to his halter, marked "Dr. William W. Welch, care of Dr. Stillman, Millerton, N. Y." The railroad company received the horse and signed a bill of lading for him. The plaintiff, at the same time, by his agent, A. B. Smith, signed the following document, known as a "stock release."

"New York Central Railroad, Whitesboro' Station, Feb'y 27th 1873. Memorandum of an agreement made this day, between the New York Central Railroad Company of the first part, by their station-agent at the above-named station, and A. B. Smith, agent, of Whitesboro', of the second part: Whereas, the said New York Central Railroad Company transports live stock only at first-class rates as per tariff, excepting where they transport them at a reduced rate in consideration of the owner or shipper assuming certain risks as specified below: Now, in consideration that the said railroad company will transport for the party of the second part such live stock at the reduced rate of 55½ cents per hundred lbs., the said party of the second part does hereby agree that the party of the first part shall not, under any circumstances, nor for any cause, be held liable beyond the sum of $200 for injury to or loss of any single animal carried pursuant to this agreement, although the actual value of such animal may exceed that amount; and said party of the second part also agrees to take the risk of injuries which the animals or either of them may receive in consequence of any of them being wild, vicious, unruly, weak, escaping or maiming themselves or each other, or from delays, or in consequence of heat, suffocation, or of being crowded, or on account of being injured, whether such injury shall be caused by the burning of hay, straw or any other material used for feeding said animals, or otherwise, and for any damage occasioned thereby, and also all risk of any loss or damage which may be sustained by reason of any delay in such transportation. And said party of the second part also agrees to examine the cars in which such animals are carried and to take all risk against accidents, injuries or damages that may happen in consequence of insecurity or defect (if any there may be) in the floor, frame or doors of the cars. * * * And this agreement further witnesseth, that the said party of the second part has this day delivered to said railroad company one horse to be transported to Millerton, N. Y., on the conditions above expressed. By Harlem R. R. Albany. S. PURDY, Station Agent."

It was proved that the plaintiff did not read this instrument.

There was no evidence that the railroad company made any deduction from its first-class rates as a consideration of this release, except as appears from the instrument itself, and the plaintiff claimed he paid the highest rates.

It was agreed that the regular line of transportation from Whitesboro' to Millerton was by the Central Railroad from Whitesboro' to East Albany, and thence to Chatham by the defendant's railroad, and from there to Millerton by the Harlem Railroad.

The horse was transported by the Central Railroad Company from Whitesboro' to East Albany, and there, with the card attached to his halter, and with the stock release, was delivered to the defendants, who transported the horse over their railroad from East Albany to Chatham. The defendants gave the plaintiff a bill of freight for the horse, stating the place to which he was to be transported.

When the horse arrived at Chatham he was found to have been injured. The plaintiff offered evidence to prove, and claimed that he had proved that the horse received his injuries while in the custody of the defendants for transportation; but the defendants denied this.

The court instructed the jury that the defendants were common carriers, and as such might to some extent limit their liability by special contract, but that the law did not permit common carriers to exempt themselves from the exercise of ordinary care and diligence in the discharge of their duties, and that the stock release was void as stipulating for total exemption from liability. And that if they should find that the plaintiff's horse was injured on the defendants' railroad, or while in the custody of the defendants for transportation, from the want of ordinary care and diligence on the part of the defendants, in such case the defendants would be liable, notwithstanding the release, and their verdict should be for the plaintiff. But that if they should find that the horse was not injured on the defendants' railroad, nor while in their custody for transportation, then their verdict should be for the defendants; or, if they should find that the horse was injured while in the defendants' custody for transportation, or while being transported on their railroad, but without any want of ordinary care and diligence on their part, then in such case their verdict should be for the defendants.

The jury returned a verdict for the plaintiff, and the defendants moved for a new trial, for error in the charge of the court.

E. W. Seymour, in support of the motion.

Andrews and *Hardenbergh*, contrà.

The opinion of the court was delivered by

FOSTER, J.—The controlling legal question, and the only important one in this case, is, what were the liabilities incurred on the part of these defendants, to this plaintiff, in the transportation of this horse? Were those liabilities such as are attached to common carriers by the common law, or were they such only as were created by special contract entered into between the parties?

The plaintiff, for certain reasons assigned by him, prayed the court to lay the special contract, set up by the defendants, out of the case; the defendants insisted that the same was a good and

valid agreement between the plaintiff and the Central Railroad Company; that the defendants were entitled to the same limitation of liabilities and duties under it, as had been stipulated for by the Central Railroad Company; and that the duties and liabilities of the defendants, in respect to the transportation of the horse, were not those by law imposed on common carriers.

The court charged the jury that the special contract insisted on by the defendants as the measure of their liability, was void, as stipulating for a total exemption from all liability.

If such was the character of this special contract, we are of opinion that the court was correct in pronouncing it void. We cannot recognise the validity of an agreement to exempt a party from all liability, where he fails to exercise ordinary care and diligence in the business in which he engages. It is revolting to the moral sense, and contrary alike to the salutary principles of law and a sound public policy, to allow a bailee for hire to stipulate for exemption from the consequences of his own carelessness and negligence.

But the defendants claim that the special contract set up by them was a limitation of their common law liability, not an exemption from all liability. That it was competent to the parties in this suit to stipulate for a diminished degree of responsibility from that imposed by law on common carriers, we have no doubt. Whether the construction put on this special contract, in the court below, was correct or not, we think the defendants have no just ground of complaint, when we look at the manner in which the case was finally put to the jury. By the charge, the liability of the defendants was for ordinary care only. The jury were told that if they should find that the plaintiff's horse was injured on the defend ants' road, or while in their custody for transportation, from want of ordinary care and diligence on their part, the defendants would be liable. But unless they should find such an injury so received on the defendants' road, or while the horse was in their custody for transportation, or if they found such injury was so received, but without any want of ordinary care and diligence on their part, then their verdict should be for the defendants.

The responsibility of the defendants was thus made no more weighty than that required by law to be of perpetual obligation. If this special contract relieved from all liability, it was void. If it limited responsibility to the exercise of ordinary care, and no

construction can be more favorable to the defendants, the defendants have the benefit of their contract, for that was the extent of the liability to which they were subjected under the charge of the court. A bailee, without reward, is responsible for such care as a prudent man takes of his own property; in other words, for ordinary care. The defendants surely cannot complain when held to no higher degree of responsibility.

It is unnecessary to pursue this discussion. The Supreme Court of the United States, in the recent case of *Railroad Co.* v. *Lockwood*, 17 Wallace 357, had the law bearing upon this subject under consideration. The leading English and American authorities were fully examined, in a very elaborate opinion by Mr. Justice BRADLEY. We coincide in the views therein expressed.

There should be no new trial.

The question decided in this case must be regarded by all, as one of paramount importance, in regard to one of the most extensive and important matters of business in the country, that of transportation in all modes. For, if carriers can make valid contracts, throwing all the evil consequences of their own negligence, and that of their employees, upon the persons and owners of things carried, there will always be found ready means of obtaining such contracts from those to be affected by them. It would, no doubt, be far better policy to extend the same rule of diligence now required in passenger-transportation, to that of goods, and to allow no qualification of it, by either notices or special contracts. But we must accept the law of carriers of goods as we find it, handed down to us from a former age, whose demands for security in transportation, led to the adoption of a rule of responsibility for carriers, which has no precise parallel in any other business, or any just foundation in reason or justice, as applied to any business at the present day. The conviction of the unreasonableness of the rule, probably has led the courts to allow, and to enforce all manner of exceptions to it, till we are in danger of bringing the law into even a worse condition than if the original rule, with all its stringency, had been rigidly adhered to, as the courts, at first, inclined to do.

The actual present state of opinion upon the leading question involved, is not fully stated perhaps in the foregoing case. As we understand that matter, after pretty careful and thorough examination, the English courts now hold that there is no invincible objection to allowing the carrier to stipulate with the owner or consignor of goods, for exemption from all responsibility in the transportation, as well from the negligence of themselves or their servants and employees. This is distinctly held in the very late case of *Gallin* v. *London & N. W. Ry.*, 23 W. R. 308; Law Rep. 10 Q. B. 212, where the question is very carefully considered and the contract upheld, where a drover signed a stipulation to exonerate the company from all responsibility, as being both valid upon general principles, and reasonable under the statute. This will be more satisfactory than any deductions we might make from an examination of the English cases, as to the present state of the law there, upon the subject.

The effect of this rule unquestionably is, to encourage laxness and indifference in carriers, in regard to all the appliances of the transportation, including the character and condition of the apparatus of transportation, as well as the service connected with its operation. This has led the American courts, generally, to reject all contracts against responsibility for negligence on the part of the carriers or their employees, as being against sound policy and good morals. But the New York courts have finally come to the conclusion that such contracts may be upheld, when expressed in clear and specific language, as intended to cover the negligence of the carrier and his employees, but that no general terms, however exclusive, will be held to extend so far: *Magin* v. *Dinsmore*, 56 N. Y. 168; see, also, *Knell* v. *Company*, 33 N. Y. Superior Ct. 423. This rule seems even less satisfactory than the English rule. For if the parties may lawfully contract for exemptions from responsibility for the consequences of their own negligence, there can be no possible reason why such an extended rule of construction should be adopted with reference to that particular exemption. There is every reason to suppose the carrier would intend to embrace that exemption above all others, if he might lawfully do so; and as the public are now very much at the mercy of railways and steamboats for transportation for long distances, there is nothing improbable in supposing the owner of goods, or passengers even, might submit to any conditions demanded. If such contracts are lawful and natural, we can conceive no reason why general terms should not be construed to embrace that particular exemption from responsibility, with carriers. But in *Magin* v. *Dinsmore*, *supra*, JOHNSON, J., distinctly declares that, by the settled laws of that state, a contract exempting the carrier from responsibility for loss, "from any cause whatever," will not extend to losses from the very causes enumerated in the bill of lading, when produced by negligence of the carrier or his employees, but might be made to embrace them if specifically named. He cites many New York cases in support of the view, most of which do not extend beyond the first part of the rule declared, in regard to which there is no controversy in the American courts. *Openheimer* v. *N. S. Express Co.*, in the Supreme Court of Illinois, 9 Alb. Law J. 187, not reported in Illinois Reports, is here cited in favor of the latter part of the rule; but we cannot believe it will ever obtain any very extensive acceptance. The opinion of Mr. Justice BRADLEY in *Railroad Co.* v. *Lockwood*, 17 Wallace 357, is the best exposition of the law upon this question we have any where found.

I. F. R.

Supreme Court of Errors of Connecticut.

DAVID P. WOODRUFF *v.* AMZI P. PLANT.

The holder of a bank check is bound to present it within a reasonable time; otherwise the delay is at his own peril.

But what is a reasonable time must depend upon the particular circumstances of the case.

And the time may be extended by the assent of the drawer, express or implied.

The plaintiff, desiring to make a remittance to a creditor at a distance, and there